IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11643 of 2000
and
SPECIAL CIVIL APPLICATION No 12685 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHIVKRUPA M.S.M. LTD.

Versus

BHARAT SANCHAR NIGAM LTD.

Appearance:
MR AJ SHASTRI for Petitioner
MR JS YADAV for Respondents

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 10/07/2001

COMMON ORAL JUDGEMENT

These two petitions are filed by the same petitioner, which is a cooperative society of labourers Shivkrupa Majdoor Sahakari Mandali Ltd. The respondents (respondent No. 1 being Bharat Sanchar Nigam Ltd. and respondent Nos. 2 and 3 being its officers at Junagadh) published tender notice dated 18.5.2000 in connection

with executing the work of laying underground cables. The petitioner herein submitted its tender and the petitioner's tender was accepted on 25.5.2000 and the work orders were issued for 10 sites which are enumerated in para 5 of each petition. The petitioner commenced execution of the work. When the petitioner learnt that respondent No. 3 was trying to entrust the same work to another contractor through private negotiations and that such meeting took place on or about 10.11.2000, the petitioner filed Special Civil Application No. 11643 of 2000 on 14.11.2000. This Court issued notice to the respondents and the petition came to be opposed by the respondents through their reply affidavit dated 12.12.2000. It is, however, not necessary to refer to the averments and submissions made in the said petition because ultimately the respondents passed the order dated 17.11.2000 terminating the contract which prompted the petitioner to file second petition being Special Civil Application No. 12685 of 2000. At the first hearing of the said petition on 14.12.2000, this Court issued Rule and granted ad-interim injunction directing the parties to maintain status quo as on that day. The ad-interim injunction came to be extended from time to time. The petitioner filed Civil Application praying for certain interim directions on the ground that the petitioner was being prevented from carrying on execution of the work inspite of the ad-interim injunction granted in favour of the petitioner. Since there was some dispute about the interpretation of the ad-interim injunction, the Court has taken up both the petitions for final disposal.

2. The impugned order dated 17.11.2000 (Annexure "B" to the petition) issued by the Assistant General Manager (MM), Junagadh - respondent No. 3 herein gives the following ground for termination of the contract :-

> "As per the above agreements you were supposed to submit valid Labour licence certificate from Asstt. Labour Commissioner within 15 days of the date of agreement for the contract Department agreed to your special request that you may be awarded the work and you will submit the required licence within 30 days.
>
> However subsequent to that, despite repeated reminders and persuasion you have failed to submit the valid Labour Licence and thus violated the condition of the contract and is in contravention to labour laws.

Hence it is decided that in view of the directive Labour Commissioner and violation of agreement duly signed by you, your contract is hereby terminated with immediate effect."

3. The case of the petitioner is that as per the practice the licence required to be obtained from the Assistant Labour Commissioner under the Contract Labour Regulation Act, 1970 (hereinafter referred as "the CLRA")is generally to be produced before the final bill is submitted by the contractor and the final payment is made by the department. In the instant case, the work was still in progress. The licence in question was pertaining to L-1 category. However, the petitioner was also eligible for getting licence in L-2 and L-3 category. Since the petitioner was also trying to obtain work contracts from the respondents in respect of the works pertaining to L-2 and L-3 categories, the petitioner was of the bona fide belief that the petitioner could obtain the licences from the Labour Department in respect of all the three categories simultaneously instead of getting such licence one after another. The petitioner's case is also that before issuing the termination order dated 17.11.2000, the respondents had not given any show cause notice to the petitioner or any opportunity of hearing. In fact, the petitioner was granted the licence under the CLRA on 27.11.2000. A copy of the said licence (Annexure "C" to the petition) was produced by the petitioner before the respondents on 29.11.2000 with a request to cancel the termination order. However, respondent No. 3 adopted non-cooperative attitude and did not revoke the termination order although the petitioner had done substantial work before the termination of the contract. It is contended that the petitioner has already incurred expenditure of more than Rs. 90 lacs for carrying out the work of laying underground cables of the length of more than 288 kms.

4. In response to the Rule, affidavit in reply has been filed by the Assistant General Manager of the respondent Corporation at Junagadh contending that as per Clause 57 of the agreement, the petitioner has to refer the disputes between the parties to the arbitrator to be appointed by the respondents at the request of the petitioner.

Secondly, it is submitted that in the contractual field, this Court would not interfere in a petition under Article 226 of the Constitution.

It is also submitted that the agreement between the respondents and the petitioner was cancelled as the petitioner failed to submit a valid labour licence even after expiry of the time limit granted to him and inspite of several telephonic reminders sent to the petitioner to produce the licence from the Assistant Labour Commissioner. It is further submitted in the reply affidavit that several notices were given by the various field officers to the petitioner for poor performance and not starting the work causing delay in achieving the departmental target.

5. The petitioner has also filed rejoinder affidavit denying the submissions made about alleged reminders sent by respondent No. 3 to the petitioner for getting the licence from the Labour Department and also contending that here were several contractors in whose case the labour licence was not insisted upon till finalization of the work. Their names are given in para 2 of the rejoinder affidavit. The plea of discrimination is also, therefore, raised.

Affidavit in sur-rejoinder has also been filed on behalf of the respondents which practically reiterates the averments and submissions made in the reply affidavit. It is also stated that a similar work contract given to Mr Mukesh Savli was also terminated.

6. At the hearing of these petitions, Mr AJ Shastri, learned counsel for the petitioner has reiterated the submissions made in the memo of the petitions and in the rejoinder affidavit. Similarly Mr JS Yadav, learned Addl. Standing Counsel for the Union of India has reiterated the submissions made in the reply affidavit and in the sur-rejoinder affidavit.

7. Having heard the learned counsel for the parties, it transpires that the only ground on which the termination order came to be issued (as stated in the termination order) was that the petitioner had not produced the licence under the CLRA from the Labour Department of the Central Government. There is no dispute about the fact that the Assistant Labour Commissioner did grant licence in favour of the petitioner on 27.11.2000. There is also no dispute about the fact that subsequent cancellation of the said licence by the Assistant Labour Commissioner was only on the ground that the respondents have terminated the agreement between the respondents and the petitioner. It is, therefore, not the case of either the respondents or the Assistant Labour Commissioner that the petitioner is not

eligible to get, or disqualified from getting, the licence under the CLRA.

8. Clauses 31.2 and 31.3 of the agreement on the basis of which the impugned termination order has been issued read as under::-

"31.2 The contractor shall obtain a valid licence (If required, depending upon the number of persons engaged and the nature of the work intended) under the Contract Labour (R&A) Act 1970 and the Contract Labour (R&A) Central Rules, 1971 before the commencement of the work, and continue to have a valid licence until the completion of the work.

31.3 Any failure to fulfill this requirement shall attract the penal provisions of this contract arising out of the resultant non execution of the work."

As per the aforesaid clauses in the agreement, the petitioner was, of course, required to obtain a valid licence under the CLRA before the commencement of the work and to continue to have the valid licence until completion of the work. However, it appears that the respondents themselves treated this requirement as directory and not mandatory because the work order was issued and materials were supplied by the respondents to the petitioner to commence the work without the petitioner obtaining any licence under the CLRA. There is some controversy as to whether the respondents have been permitting the contractors to produce such a licence after substantial work is done and before the final bill is submitted by the contractor and final payment is made by the respondent-Corporation. In para 2 of the rejoinder affidavit, the petitioner has made the following averments :-

"It is submitted that it is practice in the department that till final payment the party can produce the labour licence and as has been done in several cases even examples are quoted. It is further to be noted that even till finalization of work by several contractors at no point of time labour licence was insisted upon namely Mr Ramanlal, Mr Mukesh Savli, Minal Construction, Golden Electric Company, etc. whereas in the case of the petitioner the work is still in progress and the petitioner has not left the department

and still in the midst of work without hearing the petitioner and without informing straight-way an order of cancellation of entire contract is passed.... "

The petitioner has also denied that before issuance of the termination order, the petitioner was called upon to produce the labour licence. In sur-rejoinder, the reply on behalf of the respondents is in the following terms :-

"On similar ground contract of M/s Mukesh Savli was also terminated. Action has been taken on other contractor also for non compliance of agreement conditions."

The respondents have, however, not given any particulars as to what action has been taken when other contractors were permitted to complete their work before production of the licence under the CLRA as stated in the rejoinder affidavit.

9. Since the termination order was passed on 17.11.2000 only on the ground that the licence under the CLRA was not obtained by the petitioner and since the petitioner obtained the licence dated 27.11.2000 from the Assistant Labour Commissioner under the CLRA, but the same came to be subsequently cancelled only on the ground that the respondents had terminated the contract on 17.11.2000, it appears to the Court that the interests of justice would be served if the impugned order dated 17.11.2000 is set aside subject to the condition that the petitioner shall produce a licence under the CLRA before the respondents on or before 31.7.2001. If the petitioner produces such a licence before the authorities by 31.7.2001, the respondents shall permit the petitioner to carry on with the contract work without prejudice to all the rights and contentions between the parties about any other dispute which the parties may be having regarding the work in question.

10. It is true that the respondents have raised the contention about the petitioner having an alternative remedy of approaching the arbitrator. The following considerations dissuade the Court from accepting the above contention :-

(i) Before issuing the termination order dated 17.11.2000, the respondents did not issue any notice to the petitioner nor did the respondents give the petitioner an opportunity to produce the

licence. The stand of the respondents is that several telephonic reminders were sent to the petitioner, which are, however, categorically denied by the petitioner.

(ii) Considering the fact that the work in question i.e. laying of underground cables is an urgent work which the respondents themselves are keen to have completed at the earliest and that a period of six months has elapsed during pendency of this litigation; in the exercise of its discretionary jurisdiction under Article 226 of the Constitution, the Court considers it to be just and proper that instead of the parties investing any further time and energy in any other proceedings, the time limit is fixed for the petitioner to produce a licence under the CLRA.

(iii) In the peculiar facts and circumstances of the case, this Court is of the view that the directions as indicated above would serve the ends of justice more expeditiously rather than relegating the parties to any other forum for adjudication.

11. Mr Yadav for the respondents submits that although the licence was cancelled by the Assistant Labour Commissioner in December, 2000, the petitioner has not done anything in the matter for six months and, therefore, this Court should not exercise its extraordinary discretionary jurisdiction in favour of the petitioner. Mr Yadav has also submitted that this Court would not entertain a petition in the contractual field.

12. Mr Shastri for the petitioner submits that the licence under the CLRA is not issued in the abstract. The petitioner has to give the names of the labourers, sites and various other particulars which can be given only when the petitioner knows as to where the work is to be carried out and the labourers are selected and employed. This can be done only after the petitioner actually starts working and completes all formalities when the work is in progress. Hence, upon cancellation of the licence in December, 2000 on the ground of termination of the contract on 17.11.2000, the petitioner could not have done anything to again obtain the licence from the Assistant Labour Commissioner without first getting the termination order dated 17.11.2000 set aside.

13. As regards the contention that this Court would not entertain the petition in the contractual field, it

is true that ordinarily this Court does not interfere with the decision of the authorities in contractual matters. However, in the instant case, the only ground on which the respondents have passed the impugned order is non-production of a licence from the Assistant Labour Commissioner under the CLRA. Apart from the petitioner's explanation for the delay in production of such licence, the Court has found that while the production of the licence under the CLRA is mandatory before payment of the final bill, the respondents have themselves treated the time limit for production of the licence as directory by issuing the work order to the petitioner without the licence under the CLRA. Similar other cases are cited by the petitioner which, except one, are not disputed by the respondents. In any case, before Special Civil Application No. 12685 of 2000 came to be filed, the petitioner had already obtained the licence on 27.11.2000 and produced the same before the authorities on 29.11.2000. The situation was, however, aggravated when the Assistant Labour Commissioner cancelled the licence only on the ground that the impugned termination order was passed and, therefore, it became a sort of a vicious circle for the petitioner. In this view of the matter, it would be just and proper to set aside the termination order dated 17.11.2000 with liberty to the petitioner to obtain the licence under the CLRA from the Assistant Labour Commissioner and to produce the same before the respondents by 31.7.2001.

14. The petitions are accordingly partly allowed. Rule is made absolute to the aforesaid extent. The impugned order dated 17.11.2000 at Annexure "B" to Special Civil Application No. 12685 of 2000 is hereby quashed and set aside subject to the condition that the petitioner produces before the respondents the licence under the Contract Labour Regulation Act, 1970 on or before 31.7.2001.

15. At this stage, Mr Yadav for the respondents prays for stay of operation of this order for two weeks in order to enable the respondents to have further recourse in accordance with law.

The request deserves to be rejected as the respondents are not required to do anything before the petitioner produces the licence under the Contract Labour Regulation Act, 1970 for which the outer time limit is already fixed as 31.7.2001.

(M.S. Shah, J.)

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